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ABSTRACT

The question and answer booklet highlights the provisions of the Indian Child Welfare Act of 1978 which was designed to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. The booklet attempts to answer 28 important questions concerning title I of the Act. Examples of questions answered are: what Indian children and their families are affected by child custody provisions?; how does the law affect child welfare matters now before state courts?; do the provisions of title I regarding child custody proceedings also apply to tribal courts?; how may the states and Indian tribes facilitate transfer of jurisdiction regarding child care and custody matters?; how are Indian children living off the reservation affected by the jurisdictional issues related to child custody proceedings?; when may a state court order regarding foster care placement or termination of parental rights be invalidated?; what happens when an Indian child must be removed from the home to prevent imminent danger of physical damage or harm? Attachments include a copy of the Indian Child Welfare Act of 1978, a list of Bureau of Indian Affairs area offices, and state agencies administering social services to Indian tribes and organizations. (ERB)

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QUESTIONS AND ANSWERS

JULY 1979

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF HUMAN DEVELOPMENT SERVICES
WASHINGTON, D.C. 20201

INFORMATION MEMORANDUM

OHDS-IM-79-12 (ACYF) CWSSG
OHDS-IM-79-6 (APS)
OHDS-IM-79-1 (ANA)
July 2, 1979

TO: STATE AGENCIES ADMINISTERING SOCIAL SERVICES UNDER TITLES IV-B AND XX, FEDERALLY RECOGNIZED INDIAN TRIBES, AND INDIAN AND OTHER INTERESTED ORGANIZATIONS

SUBJECT: The Indian Child Welfare Act of 1978 (P.L. 95-608)

CONTENT: Questions and Answers Which Highlight Provisions of the Act and its Impact on Services to Indian Children and Their Families. The Department of Interior, Bureau of Indian Affairs, is responsible for administering the Act.

ATTACHMENTS: Copy of the Indian Child Welfare Act of 1978
List of Bureau of Indian Affairs Area Offices (to State Agencies)
List of State Agencies Administering Social Services Under Titles IV-B and XX (to Indian tribes and organizations)

RELATED REFERENCES: OHDS-AT-79-11 (ACYF) CWSSG, OHDS-AT-79-17 (APS), OHDS-AT-79-1 (ANA), OHDS-IM-79-1 (APS)

PROGRAM APPLICABILITY: Child Welfare Services under title IV-B
Social Services under title XX

INQUIRIES TO: Regional and Acting Regional Program Directors, ACYF
Regional Program Directors, APS
Regional Program Specialists, ANA

Commissioner, Administration for Children, Youth, and Families

Commissioner, Administration for Public Services

Commissioner, Administration for Native Americans

Questions and Answers Which Highlight Provisions of the Indian Child Welfare Act of 1978 (P.L. 95-608)

Introduction

The Indian Child Welfare Act of 1978 ("the Act") was enacted November 8, 1978. The Act is designed to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. It does this by establishing by statute minimum Federal standards for the removal of Indian children from their families, including provisions to assure the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture. The Act also authorizes the awarding of grants to Indian tribes and organizations in the establishment and operation of child and family service programs.

Title I relates specifically to child custody proceedings. Sections 101(a), 108, and 109 became effective upon enactment of the law, November 8, 1978. All other provisions of title I took effect six months after enactment of the law, which was on May 6, 1979.

Section 201 of title II authorizes the Department of the Interior (DOI) to make grants to Indian tribes and organizations for establishing and operating child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. Section 202 of title II authorizes DOI to make grants also to off-reservation Indian groups for operating child and family service programs. At the present time there is no appropriation of funds for activities under title II. Title II also includes certain provisions related to titles IV-B and XX of the Social Security Act which became effective upon enactment of the law.

Titles III and IV also became effective on November 8, 1978. Title III specifies key record-keeping requirements for Indian child placement proceedings. Title IV covers miscellaneous provisions of the law.

The Act is to be administered by the Department of the Interior, Bureau of Indian Affairs (BIA). The BIA published proposed regulations on April 23, 1979, (44 Fed. Reg. 23992) with a 30-day comment period. Final regulations are expected to be published in early summer.

The Act does affect State courts and State and local agencies providing services to Indian children and their families under titles IV-B and XX and with State funds. Therefore, those agencies and courts should become knowledgeable about the implications and impact of the Act.

This memorandum attempts to answer some of the most important questions that the Act raises. The following questions concentrate mostly on title I of the Act. More information about the other titles will be sent later. It should be noted that these questions and answers do not constitute regulations, but are meant to provide suggested guidance. House Report No. 1386 of the U.S. House of Representatives, dated July 24, 1978, also clarifies many of the provisions of the Act. A copy of this report may be obtained by writing to the attention of Public Documents, U.S. House of Representatives, Washington, D.C. 20515.

QUESTIONS AND ANSWERS

1. Q. WHAT INDIAN CHILDREN AND THEIR FAMILIES ARE AFFECTED BY THE CHILD CUSTODY PROVISIONS OF TITLE I?

   A. All Indian children and their families who are members of federally recognized tribes or Alaskan native villages and who come under the jurisdiction of State courts are affected.

   Following are specific definitions relating to Indian child welfare matters:

   - An "'Indian child' means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (emphasis added)

   - An Indian child's tribe is defined as "(a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts."

   - An Indian tribe is "any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act."

   - Indian reservation means "Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which

is either held by the United States in trust for... any Indian tribe or individual... subject to a restriction by the United States against alienation."

- The unwed father whose paternity has not been established is not covered under the Act.

Section 4

Indians who are members of non-federally recognized tribes and Indians living off the reservation who have no federally recognized tribal affiliation, are not affected by title I.

2. Q. HOW DOES THE LAW AFFECT CHILD WELFARE MATTERS NOW BEFORE STATE COURTS?

A. The law does not affect child welfare matters which are now before the courts until May 6, 1979. However, the provisions are applicable to children in all proceedings after May 6, 1979. Also, when a tribe reassumes jurisdiction over child welfare matters (Section 108) the State court continues to exercise jurisdiction over cases already before the court.

Sections 113 and 108(d)

3. Q. IF THERE IS A CONFLICT BETWEEN THE PROVISIONS OF THIS ACT AND STATE LAW PERTAINING TO CHILD CUSTODY PROCEEDINGS, AND A CONFLICT OVER STANDARDS OF PROTECTION OF RIGHTS OF PARENTS OR INDIAN CUSTODIANS, WHICH LAW TAKES PRECEDENCE?

A. - Regarding child custody proceedings: the provisions of this Act supersede State law.

House Report No. 1386 pp. 17-19

- The Act sets minimum standards of protection of parents' rights in child custody proceedings but allows for the use of higher Federal or State standards if any exist.

Section 111

4. Q. DO THE PROVISIONS OF TITLE I REGARDING CHILD CUSTODY PROCEEDINGS ALSO APPLY TO TRIBAL COURTS?

A. Although the Act clarifies the authority of tribal courts, the procedures and standards in title I are directed toward State courts. Indian courts may wish to adopt any or all of these standards. The only exception is that Indian tribes must give full faith and credit to the acts of other Indian tribal courts.

Sections 101(d) and 105(c)

5. Q. ARE STATE COURTS REQUIRED TO TRANSFER JURISDICTION TO TRIBAL COURTS FOR INDIAN CHILDREN WHO ARE DOMICILED OR RESIDING OFF THE RESERVATION?

A. An Indian tribe, effective upon enactment of this statute, has exclusive jurisdiction over any custody proceeding involving an Indian child who resides or is domiciled on a reservation or is a ward of a tribal court. Where an Indian child is not domiciled or residing on a reservation and a State court is involved in foster care placement or termination of parental rights, the Act requires such transfer of jurisdiction if the following conditions are met:

a) either parent, the Indian custodian, or the child's tribe petitions the court for transfer;

b) the State does not find there is good cause against transfer;

c) there is no objection by either parent; and

d) the tribal court does not decline jurisdiction.

Section 101(b)

6. Q. HOW MAY THE STATES AND INDIAN TRIBES FACILITATE TRANSFER OF JURISDICTION REGARDING CHILD CARE AND CUSTODY MATTERS?

A. The States and tribes may enter into agreements regarding care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which provide for an orderly transfer of jurisdiction on a case-by-case basis.

Section 109

7. Q. UNDER WHAT CIRCUMSTANCES DOES A TRIBAL COURT HAVE EXCLUSIVE JURISDICTION OVER CHILD CUSTODY PROCEEDINGS?

A. Whenever the proceedings involve an Indian child living or domiciled on the reservation, unless Federal law has vested jurisdiction in the State. The tribal court also retains jurisdiction when an Indian child is a ward of the tribal court, regardless of the child's place of residence or domicile.

Section 101(a)

However, it should be noted that this Act allows tribal courts on reservations where a State is asserting jurisdiction under federal law (e.g., P.L. 83-280) to reassume unquestioned and exclusive jurisdiction over child custody proceedings involving Indian children by petitioning the Secretary of the Interior.

Section 108

8. Q. HOW ARE INDIAN CHILDREN LIVING OFF THE RESERVATION AFFECTED BY THE JURISDICTIONAL ISSUES RELATED TO CHILD CUSTODY PROCEEDINGS?

A. In any involuntary State court proceeding regarding custody of an Indian child living off the reservation, the State court shall transfer jurisdiction to the tribal court, upon petition of the child's parent, Indian custodian, or the Indian child's tribe, in the absence of good cause to the contrary. Such a transfer will not take place if either parent objects or if the tribal court declines jurisdiction.

Section 101(b)

9. Q. WHAT DOES THE "FULL FAITH AND CREDIT" CLAUSE IN TITLE I MEAN?

A. It extends to the public acts, records, and judicial determinations in child custody proceedings of any Indian tribe, the same recognition that a State extends to the similar acts, records, and proceedings of another State or Federal court. Indian tribes also are required to give full faith and credit to other Indian tribes.

Section 101(d)

10. Q. WHAT ARE THE MAJOR REQUIREMENTS THE ACT SPECIFIES FOR STATE COURTS IN INVOLUNTARY CHILD CUSTODY PROCEEDINGS RELATING TO FOSTER CARE OR ADOPTION ONCE IT IS DECIDED THAT A STATE COURT HAS JURISDICTION?

A. - Notify the parent or Indian custodian and the child's tribe of the pending proceedings and their right of intervention.

Section 102(a)

- Give notice to the Secretary of the Interior, if the identity or location of all interested parties cannot be determined. The Secretary then has 15 days to provide such notice to all interested parties.

Section 102(a)

- Adhere to a set of standards of evidence before removal of a child or termination of parential rights, as follows:

  -- It must be shown that active efforts were made to provide remedial services and rehabilitative programs to the family to prevent placement, and that these efforts were unsuccessful, before the child is placed out of the home.

  -- The court must have clear and convincing evidence when considering foster care placement, that continued custody by the parent or custodian is likely to result in serious emotional or physical damage to the child.

  -- The evidence must be beyond a reasonable doubt in the case of a proceeding to terminate parental rights.

Section 102 (d,e,f)

- Appoint counsel for any court-determined indigent parent or Indian custodian.

Section 102(b)

- Appoint counsel for the child if the court deems it to be in the child's best interest.

Section 102(b)

11. Q. WHAT ARE THE ADDITIONAL PROVISION OF SERVICE REQUIREMENTS IMPOSED ON STATE AGENCIES IN TITLE I?

A. Active efforts must be shown, by the party seeking to make a placement or petitioning for termination of parental rights, that remedial and rehabilitative services have been provided to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Section 102(d)

12. Q. WHAT ARE THE MAJOR REQUIREMENTS OF STATE COURTS IN VOLUNTARY CHILD CUSTODY PROCEEDINGS?

A. - Any consent to foster care or adoption must be executed in writing before a judge.

- A voluntary consent to foster care or adoption is not valid if it is given prior to ten days after the birth of a child.

- The judge must certify "that the terms and consequences of the consent were fully explained to and understood by the parent or Indian custodian." Where necessary, the court must certify that the explanation was translated into the native language of the Indian involved.

- Consent to foster care placement may be withdrawn at any time.

- Consent to termination of parental rights or adoption may be withdrawn for any reason before the final decree.

- A parent may withdraw consent to adoption within two years after the final decree if such consent was obtained through fraud or duress.

Section 103

13. Q. WHEN MAY A STATE COURT ORDER REGARDING FOSTER CARE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS BE INVALIDATED?

A. Whenever the requirements related to jurisdictional issues, and voluntary or involuntary court custody proceedings, are violated.

Section 104

14. Q. IN AN ADOPTIVE PLACEMENT OF AN INDIAN CHILD UNDER STATE LAW, WHETHER VOLUNTARY OR INVOLUNTARY, IS THERE AN ORDER OF PREFERENCE IN PLACING THE CHILD?

A. Yes, in the absence of good cause to the contrary, the order of preference is with:

1) a member of the child's extended family;

2) other members of the Indian child's tribe; or

3) other Indian families.

However, the Indian child's tribe may change the order of preference by resolution.

Section 105(a)

15. Q. WHAT IS THE ORDER OF PREFERENCE IN A FOSTER CARE OR PREADOPTIVE PLACEMENT, WHETHER VOLUNTARY OR INVOLUNTARY?

A. 1) a member of the child's extended family;

2) a foster home licensed, approved or specified by the child's tribe;

3) an Indian foster home licensed, or approved by an authorized non-Indian licensing authority; or

4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a suitable program.

However, the Indian child's tribe may change the order of preference by resolution.

Section 105(b)

16. Q. WHAT OTHER CONDITIONS MUST BE MET WHEN A CHILD IS CONSIDERED FOR FOSTER CARE OR PREADOPTIVE PLACEMENT, WHETHER VOLUNTARY OR INVOLUNTARY?

A. The setting must:

- be the least restrictive and most approximate a family;

- meet the child's special needs, if there are any; and

- be within reasonable proximity to the child's own home, taking into account the child's special needs.

Section 105(b)

17. Q. WHAT DO THE ORDER OF PREFERENCE REQUIREMENTS MEAN TO STATE AGENCIES?

A. Many State agencies will want to make greater efforts and work more cooperatively with tribes to recruit Indian foster care and adoptive homes, and to encourage tribes to develop programs to recruit and license Indian foster care and adoptive homes.

18. Q. IN THE ABSENCE OF GOOD CAUSE TO THE CONTRARY, WHAT PLACEMENT STANDARDS SHALL APPLY IN MEETING THE PREFERENCE REQUIREMENTS FOR VOLUNTARY AND INVOLUNTARY ADOPTIVE AND FOSTER CARE PLACEMENTS?

A. The prevailing social and cultural standards of the relevant Indian community should be used in making any placement.

Section 105(b) and (d)

19. Q. WHAT HAPPENS IF THE FINAL DECREE OF ADOPTION IS VACATED OR THE ADOPTION FAILS?

A. The biological parent or prior Indian custodian may petition for return of custody, which shall be granted unless the court finds that this would not be in the child's best interests.

Section 106

20. Q. WHAT HAPPENS WHEN A CHILD HAS BEEN IMPROPERLY REMOVED FROM A PARENT OR CUSTODIAN?

A. The court shall order the child's return and decline jurisdiction unless such return would subject the child to substantial and immediate danger or threat of such danger.

Section 110

21. Q. DO THE PROVISIONS OF TITLE I OF THE ACT REGARDING VOLUNTARY AND INVOLUNTARY PLACEMENTS APPLY TO PRIVATE AS WELL AS TO PUBLIC AGENCIES?

A. Yes, the Act makes no distinction between private or voluntary and public agencies.

22. Q. WHAT HAPPENS WHEN AN INDIAN CHILD MUST BE REMOVED FROM THE HOME TO PREVENT IMMINENT DANGER OF PHYSICAL DAMAGE OR HARM?

A. - For an Indian child who is living on the reservation, and where the tribal court has jurisdiction, the State may not intervene.

- For an Indian child who is living temporarily off the reservation, the law allows the State to remove or place the child in foster care in such an emergency. However, such placement ends when it is no longer needed as a preventive measure.

- For an Indian child who is living permanently off the reservation, the law does not address whether the State has the right to make an emergency removal or placement. Therefore, it is assumed that such an Indian child would be afforded the same protection as any other resident of the State.

Section 112

23. Q. WHAT ARE THE MAJOR PROVISIONS IN THE ACT IN REGARD TO RECORD KEEPING, RECORD AVAILABILITY AND CONFIDENTIALITY OF RECORDS?

A. - In any involuntary child custody proceeding, each party to the proceeding shall have the right to examine all reports or other documents filed with the court upon which a decision was based. Case records would not be included unless they are documents upon which a judicial decision was made.

Section 102(c)

- In all foster care, preadoptive or adoptive situations where decisions are made regarding placement preference, records of efforts to comply with the order of preference stipulated in the law shall be kept, and shall be made available to the Indian child's tribe and the Secretary of the Interior upon request.

Section 105(e)

- State court records must be kept in order to allow any Indian who has reached age 18 and who was the subject of an adoptive placement, to find out his or her tribal affiliation and any other information that might be

necessary to protect any rights flowing from that affiliation.

Section 107

- State court records must be kept on all adoption proceedings in order to provide the Secretary of the Interior with a copy of the final decree plus information about tribal affiliation of the child and the names and addresses of the biological parents and adoptive parents, and the identity of any agency having information relating to the adoptive placement.

  The Act provides for the confidentiality of such information and such information is not subject to the Freedom of Information Act.

Section 301(a)

State agencies involved in adoption or foster care proceedings should keep adequate records of their involvement in order to comply with the provisions related to record keeping, record availability, and confidentiality.

24. Q. TO WHAT INDIAN GROUPS ARE THE CHILD AND FAMILY SERVIC PROGRAMS AUTHORIZED UNDER TITLE II OF THE ACT DIRECTED?

A. The law extends the Bureau of Indian Affairs' (BIA) authority to provide social services to Indian groups living off the reservation as well as to on-reservation Indians. Further, it allows the BIA to provide a wider range of social services to Indians than has been previously authorized.

25. Q. DOES THE ACT ALLOW FEDERAL GRANTS TO TRIBES UNDER TITLES IV-B AND XX OF THE SOCIAL SECURITY ACT?

A. No. Section 203(a) authorizing the Secretary of HEW to use funds appropriated for similar HEW programs does not change the existing formula grant process under titles IV-B and XX.

Section 203(a)

26. Q. IS THERE ANY ADDITIONAL MONEY AVAILABLE TO TRIBES OR OFF-RESERVATION INDIAN GROUPS OR ORGANIZATIONS TO ESTABLISH AND OPERATE INDIAN CHILD AND FAMILY SERVICES PROGRAMS OR TO PROVIDE THE NON-FEDERAL MATCH FOR SUCH PROGRAMS?

A. Not at the present time. However, the BIA is requesting such funds from the Congress.

Section 203(b)

27. Q. FUNDS APPROPRIATED UNDER THE ACT MAY NOT BE USED AS A BASIS FOR DENYING OR REDUCING ASSISTANCE UNDER TITLES IV-B AND XX OF THE SOCIAL SECURITY ACT OR OTHER FEDERALLY ASSISTED PROGRAMS. WHAT DOES THIS REQUIREMENT MEAN FOR STATE AGENCIES?

A. This means that the possibility that there may be new funds available for services to Indians does not lessen the responsibility of States, under other federally assisted programs, to deliver services to Indians directly or by purchase of service arrangements.

Section 201(b)

28. Q. HOW MAY INDIAN CHILD WELFARE ACT FUNDS BE USED FOR MATCHING PURPOSES UNDER TITLES IV-B AND XX?

A. The law allows Indian Child Welfare Act funds, when appropriated, to be used by Indian tribes as the non-federal share for titles IV-B and XX or other federally assisted programs when such programs contribute to the purpose of this Act. The matching provision does not apply to grants made to Indian organizations for off-reservation programs.

Section 201(b)

Public Law 95-608
95th Congress

An Act

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Nov. 8, 1978
[S. 1214]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

Indian Child Welfare Act of 1978.
25 USC 1901 note.

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

25 USC 1901.

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

Congress, responsibility for protection of Indians.

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 USC 1902.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Definitions.
25 USC 1903.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

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(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);

43 USC 1606.

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended;

43 USC 1602.

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

Indian tribes, exclusive jurisdiction over Indian child custody proceedings. 25 USC 1911.

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Foster care placement, court proceedings. 25 USC 1912.

SEC. 102. (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court

shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights, voluntary termination.
25 USC 1913.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

25 USC 1914.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of com-

petent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

Adoptive placement of Indian children. 25 USC 1915.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Petition, return of custody. 25 USC 1916.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

Removal from foster care home.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

25 USC 1917.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement,

the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Reassumption, jurisdiction over child custody proceedings. 25 USC 1918. 18 USC prec. 1151 note. 25 USC 1321. 28 USC 1360 note.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe:

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

States and Indian tribes, agreements. 25 USC 1919.

SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such

revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Improper removal of child from custody.
25 USC 1920.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

25 USC 1921.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

Emergency removal of child.
25 USC 1922.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Effective date.
25 USC 1923.

SEC. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

25 USC 1931.

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

42 USC 620, 1397.

Additional services.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

25 USC 1932.

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Funds.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

25 USC 1933.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended. 25 USC 13.

SEC. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401). 25 USC 1934. 25 USC 1603.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show— Final decree, information to be included. 25 USC 1951.

(1) the name and tribal affiliation of the child;
(2) the names and addresses of the biological parents;
(3) the names and addresses of the adoptive parents; and
(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act. Effective date. Rules and regulations. 25 USC 1952.

TITLE IV—MISCELLANEOUS

Day schools.
25 USC 1961.

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

Report to congressional committees.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

Copies to each State.
25 USC 1962.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

25 USC 1963.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

Approved November 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1386, accompanying H.R. 12533 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 95-597 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD:
Vol. 123 (1978): Nov. 4, considered and passed Senate.
Vol. 124 (1978): Oct. 14, H.R. 12533 considered and passed House; passage vacated, and S. 1214, amended, passed in lieu.
Oct. 15, Senate concurred in House amendments.

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Muskogee, Okla. 74401
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(East Okla.)

Navajo Area Office
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